

Out-of-State Workers May Sue under Massachusetts Wage Act

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Late last month, the Massachusetts Supreme Judicial Court held in *Taylor v. Eastern Connection Operating, Inc.* that out-of-state plaintiffs may bring suit under the Massachusetts independent contractor statute where the contract at issue specified that Massachusetts law applied. This week, the Massachusetts Appeals Court extended that principle by holding that an employee who lives and works outside of the Commonwealth can sue for unpaid wages under the Wage Act. In *Dow v. Casale*, the Court explained that a non-resident can bring a Wage Act claim provided that the plaintiff's employment is sufficiently connected to Massachusetts.

In *Dow*, the former sales director of a Massachusetts-based software company sued the company's chief executive officer under the Wage Act, seeking unpaid commissions, unreimbursed expenses and payment for accrued vacation time. The plaintiff was a Florida resident who, apart from 8 to 12 business trips per year to Massachusetts, worked outside of Massachusetts, mainly at his Florida home. The defendant argued that the plaintiff could not maintain a claim under the Wage Act because he did not reside in Massachusetts and did not perform his work primarily in the Commonwealth. The Superior Court disagreed, finding that the plaintiff had sufficient contacts with Massachusetts to bring him within the protections of the Wage Act.

On appeal, the Appeals Court affirmed the Superior Court's decision because Massachusetts had the most significant relationship to the defendant, his company and the plaintiff's employment relationship with them. In concluding that the plaintiff could bring a Massachusetts Wage Act claim, the Appeals Court focused on the fact that:

- The plaintiff's employer was headquartered in Massachusetts;
- All of the employer's physical facilities were located in Massachusetts;
- The customers the plaintiff acquired entered into business with his employer in Massachusetts;
- The plaintiff's business cards listed his employer's Massachusetts address as his own;
- The plaintiff's paychecks came from Massachusetts;
- The plaintiff traveled to Massachusetts on business several times a year and worked from his employer's office; and
- The plaintiff communicated with the defendant, who was located in Massachusetts, daily by e-mail and several times a week by telephone.

Based on these facts, the Court held that Massachusetts was the state with the most substantial connection to the plaintiff's employment and thus it was reasonable to allow him to bring a claim under the Wage Act. Notably, the plaintiff's employment contract specified that Massachusetts law applied, but the Appeals Court did not view this as dispositive, focusing instead on the nature of the relationship.

The Appeals Court's decision has significant consequences for Massachusetts-based employers. Given recent technological advances, many employers have employees working remotely from their homes in other states. *Dow* establishes that these non-resident employees may be entitled to the benefits of Massachusetts wage and hour laws. *Dow* essentially means that Massachusetts-based employers need to assess whether Massachusetts law or the law of an employee's home state is more favorable to the employee and follow the most employee-friendly wage and hour laws.

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